

LEON M. FLANAGAN, ET AL.

IBLA 76-459

Decided June 24, 1976

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease application NM-27199.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease offer filed on a simultaneous filing drawing entry card must be rejected if it contains the names of additional parties in interest, and there is a failure to file, within the time required by 43 CFR 3102.7, the statement of their interests, the agreement between the parties, and the evidence of their qualifications.

2. Administrative Procedure: Generally--Estoppel--Federal Employees and Officers: Authority to Bind Government-- Regulations: Waiver

A noncompetitive oil and gas lease applicant's failure to submit the statement of interest of the other parties in interest to the offer is not excused, nor is the Department estopped to reject such an offer, by his reliance on the Department's prior erroneous issuance of a lease to the applicant on an offer which was deficient for the same reason.

3. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Bona Fide Purchaser

The bona fide purchaser provision of the Act of September 21, 1959, 73 Stat. 571, as amended, 30 U.S.C. § 184(h)(2) (1970), does not protect the assignee of a noncompetitive oil and gas lease offeror from the rejection of its assignor's offer after it is drawn first at a simultaneous drawing.

APPEARANCES: Leon M. Flanagan, pro se; Robert H. Thomas, Esq., for Gulf Oil Corporation.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Leon M. Flanagan has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated January 7, 1976, which rejected his oil and gas lease offer NM-27199. Appellant's offer was drawn first for Parcel No. 346 at the noncompetitive oil and gas lease simultaneous drawing held by the New Mexico State Office December 10, 1975. The State Office rejected the offer because appellant failed to comply with the regulation which requires any other parties in interest to file a statement of the interest of each in the offer, the nature of any agreement between the parties, and evidence of their qualifications within 15 days of filing the lease offer. 43 CFR 3102.7. Appellant's lease offer named four others as having interests in the lease offer, and no statement was filed by them.

[1] In Ross I. Gallen, 15 IBLA 86, 87 (1974), the Board upheld the rejection of an offer for which the required statement of interests was not filed. The Board rejected the argument that the drawing entry card was misleading in that the card itself does not specify that the other parties in interest must file the statement of interests required by 43 CFR 3102.7. The Board pointed out that persons dealing with the Government are presumed to have knowledge of duly promulgated regulations (44 U.S.C. §§ 1507, 1510 (1970); Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384-85 (1947)), and in addition noted that the drawing entry card contains a reference to 43 CFR Subpart 3102 to aid the applicant in compliance with the oil and gas regulations, including the provision at issue here. If the statement is not filed, the offer must be rejected. Ross I. Gallen, *supra*; Robert L. Evans, 10 IBLA 236, 237 (1973); Hiroshi Mizoguchi, 4 IBLA 249, 250 (1972); Richard Hubbard, 2 IBLA 270, 272-73, 78 I.D. 170, 172 (1971).

[2] In this case, appellant argues he was misled by the fact that he was previously issued a lease (NM-21765) in 1974 on an identical offer: one that included the names of other parties in interest on the drawing card, and for which the required statement was not filed. In response to receipt of this information in the notice of appeal and statement of reasons, the State Office issued a decision dated February 9, 1976, canceling lease NM-21765. Appellant then filed a supplemental statement of reasons, not appealing cancellation of the outstanding lease NM-21765, but emphasizing that the issuance of the prior lease on the same facts, as admitted by the State Office cancellation decision, materially misled him into regarding the filing of the statement as unnecessary.

As a general rule, an applicant is not entitled to rely upon misinformation or erroneous advice given by Departmental officials. Regulation 43 CFR 1810.3(b) provides, "The United States is not * * * estopped by the acts of its officers or agents when they * * * cause to be done what the law does not sanction or permit." Similarly, 43 CFR 1810.3(c) provides, "Reliance upon information or opinion of any officer * * * cannot operate to vest any right not authorized by law."

The only relevant exception to this rule was established in Brandt v. Hickel, 427 F.2d 56 (9th Cir. 1970), in which the Court reversed the Department's affirmance of the State Office's rejection of an oil and gas lease application. The Court held, "We conclude that the collateral estoppel doctrine can properly be applied in this situation where the erroneous advice was in the form of a crucial misstatement in an official decision." Id. at 57. It went on to note that the estoppel would not in its application hurt the Department, or result in the giving away of valuable assets. Id. While the latter conditions may be met here, the former certainly is not. Appellant relied not on formal advice given in the case at hand, but on an implication (that such an offer was complete) derived from erroneous action almost 2 years before in a different case. Even if estoppel were to be regarded as controlling, we do not regard this indirect and stale information as the type of straightforward advice on which to base a claim of reasonable reliance that would justify the waiver of the mandatory regulation at issue, and bind the Department to take positive action on a defective application. We find Brandt distinguishable on this basis, and reject appellant's claim of justifiable reliance on the fact that lease NM-21765 was issued on a similarly defective offer. 43 CFR 1810.3(c); see Ross I. Gallen, *supra*.

[3] Gulf Oil Corporation filed a statement of reasons asserting that it is the assignee of appellant's lease offer by virtue of an assignment filed with the New Mexico State Office

on January 30, 1976. Gulf argues that as appellant's assignee it is protected from rejection of Flanagan's offer by the bona fide purchaser provision of the Mineral Leasing Act of 1920, 30 U.S.C. § 184(h)(2) (1970). Act of September 21, 1959, 73 Stat. 571, as amended. Gulf argues that the Department has expanded the statutory term "lease" to include lease offers for some purposes, including the chargeable acreage provisions, and it should do so with the bona fide purchaser provision as well.

In Herman A. Keller, 14 IBLA 188, 81 I.D. 26 (1974), the Board rejected the argument pressed by Gulf. 30 U.S.C. § 184(h)(2) (1970) provides:

The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions * * *.

Each clause in the provision presupposes the existence of a lease. The assignee of a lease offer does not hold an "interest in a lease" or an "option to acquire a lease" within the meaning of the statute. 1/ Herman A. Keller, supra at 192-93, 81 I.D. at 29. Until a lease issues, the only protection afforded to Flanagan, and through him Gulf, was the right to be accorded priority if, all else being regular, the lease issued. See, e.g., Schraier v. Hickel, 419 F.2d 663, 666-67 (D.C. Cir. 1969); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). It is because all else is not regular, i.e., appellant's first drawn offer was defective, that no lease may issue.

Gulf's argument that offers have been equated with leases for other purposes in oil and gas leasing, an argument not treated in Keller, is not persuasive here. The cases Gulf cites, Melvin A. Brown, 69 I.D. 131 (1962), and John H. Trigg, 60 I.D. 166 (1948), 2/ hold that acreage in lease offers is to be included in chargeable

1/ This construction of the provision is corroborated in the contract between Flanagan and Gulf itself. Issuance of the lease on offer NM-27199 is the condition precedent to Gulf's liability to Flanagan under the assignment, according to the documents filed with the request-for-approval-of-assignment form. Gulf is thus not an assignee of the lease offer but rather a contingent assignee of the lease, should it issue.

2/ Rev'd on other grounds, John H. Trigg (On Reconsideration), A-24483 (April 8, 1949).

acreage for the purpose of calculating the acreage limitations on an individual's lease holdings. These cases treated the Departmental regulations adopted under the authority of section 32 of the Mineral Leasing Act of 1920, 30 U.S.C. § 189 (1970), for the efficient administration of the Act, including the acreage limitation provisions. The regulatory equation of leases and lease offers for this limited purpose was to assure that the Department could enforce the statutory provisions; in this case the equation of leases and lease offers would expand the bona fide purchaser's protection beyond the scope of the statutory provision. We follow Herman A. Keller, supra.

For the reasons discussed, we find that appellant's offer was properly found defective, that the State Office was not precluded from rejecting the defective offer by its prior erroneous issuance of a lease under similar circumstances, and that rejection of the offer is not precluded by Gulf Oil Corporation's status as an assignee of the offeror. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Martin Ritvo
Administrative Judge

